

ESTTA Tracking number: **ESTTA301986**

Filing date: **08/20/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Alcon, Inc.
Granted to Date of previous extension	08/23/2009
Address	Bosch 69 Hunenberg, CH-6331 SWITZERLAND

Domestic Representative	Jennifer L. Dean Attorney for Opposer Drinker Biddle & Reath LLP 1500 K Street, NW Washington, DC 20005 UNITED STATES dctrademarks@dbi.com
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Applicant Information

Application No	77592507	Publication date	02/24/2009
Opposition Filing Date	08/20/2009	Opposition Period Ends	08/23/2009
Applicant	DAIICHI SANKYO COMPANY, LIMITED 3-5-1, Nihonbashi Honcho Chuo-ku, Tokyo, 103-8426 JAPAN		

Goods/Services Affected by Opposition


Class 005. All goods and services in the class are opposed, namely: Pharmaceutical preparations for the treatment and prevention of cardiovascular disease, atherosclerosis, diabetic nephropathy, stroke, heart attack, hypercholesterolemia, dyslipidemia, anemia, blood disorders, diabetes, thyroid function disease, metabolic disorders, cancer, oncological disease, metastasis, autoimmune disease, allergy, bacterial infection, viral infection, fungal infection, inflammation and inflammatory disease, musculoskeletal disorders, pain, osteoporosis, Alzheimer's disease, obesity, anorexia, urinary and kidney disease, respiratory disease; Diagnostic reagents and contrast media for medical use

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	3391196	Application Date	05/23/2007
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Registration Date	03/04/2008	Foreign Priority Date	03/08/2007
Word Mark	AZARGA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: Ophthalmic pharmaceutical preparations		

Attachments	77188722#TMSN.jpeg (1 page)(bytes) ARZART NoO.pdf (11 pages)(298859 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/anthony j. palumbo/
Name	Anthony J. Palumbo
Date	08/20/2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Serial No. 77/592,507 - ARZART

Filed: October 14, 2008

Published: February 24, 2009

ALCON, INC.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. _____
	:	
DAIICHI SANKYO	:	
COMPANY, LIMITED	:	
	:	
Applicant.	:	

NOTICE OF OPPOSITION

Alcon, Inc., a Swiss corporation, having a business address at Bosch 69, CH-6331 Hunenberg, Switzerland ("Opposer") believes that it will be damaged by the registration of the mark shown in application Serial No. 77/592,507 - ARZART for pharmaceutical preparations for the treatment and prevention of cardiovascular disease, atherosclerosis, diabetic nephropathy, stroke, heart attack, hypercholesterolemia, dyslipidemia, anemia, blood disorders, diabetes, thyroid function disease, metabolic disorders, cancer, oncological disease, metastasis, autoimmune disease, allergy, bacterial infection, viral infection, fungal infection, inflammation and inflammatory disease, musculoskeletal disorders, pain, osteoporosis, Alzheimer's disease, obesity, anorexia, urinary and kidney disease, respiratory disease; diagnostic reagents and contrast media for medical use; filed October 14, 2008 by Daiichi Sankyo Company, Limited, a joint stock company formed and organized under the laws of Japan, having a business address at 3-

5-1, Nihonbashi Honcho, Chuo-ku, Tokyo 103-8426, Japan ("Applicant"); and hereby opposes the same pursuant to §13 of the Trademark Act of 1946 (15 U.S.C. §1063).

As grounds of opposition, it is alleged that:

1. Opposer is the owner of Reg. No. 3,391,196 – AZARGA, filed May 23, 2007 and registered on March 4, 2008. A true and correct copy of the U.S. Patent and Trademark Office TARR report showing the status of this registration and the corresponding certificate of registration are attached as Exhibit A.

2. On information and belief, Applicant had not used the mark ARZART in connection with any goods sold or transported in the ordinary course of trade in the United States prior to October 14, 2008.

3. On information and belief, Applicant has not used the mark ARZART in connection with any goods sold or transported in the ordinary course of trade in the United States as of the filing date of this opposition.

4. The earliest priority date on which Applicant can rely in connection with the goods covered by application Serial No. 77/592,507 is the October 14, 2008 filing date.

5. On information and belief, at the time of the filing of Application Ser. No. 77/592,507, Applicant did not have a bona fide intent to use the ARZART mark in connection with the sale or transport of all of the goods covered by Ser. No. 77/592,507 in the ordinary course of trade in the United States.

6. On information and belief, at the time of the filing of this Notice of Opposition, Applicant does not have a bona fide intent to use the ARZART mark in connection with the sale or transport of all of the goods covered by Ser. No. 77/592,507 in the ordinary course of trade in the United States.

7. The goods for which Opposer has registered the AZARGA mark and the goods for which Applicant seeks to register its ARZART mark are both pharmaceutical products.

8. The goods for which Opposer has registered the AZARGA mark and the goods for which Applicant seeks to register its ARZART mark are closely related.

9. The goods for which Opposer has registered the AZARGA mark and the goods for which Applicant seeks to register its ARZART mark may be sold through the same channels of trade and to the same class of purchasers.

10. Opposer's AZARGA mark and Applicant's ARZART mark are nearly identical in appearance, sound and commercial impression.

11. On information and belief, Applicant's use and registration of ARZART in connection with pharmaceutical preparations for the treatment and prevention of cardiovascular disease, atherosclerosis, diabetic nephropathy, stroke, heart attack, hypercholesterolemia, dyslipidemia, anemia, blood disorders, diabetes, thyroid function disease, metabolic disorders, cancer, oncological disease, metastasis, autoimmune disease, allergy, bacterial infection, viral infection, fungal infection, inflammation and inflammatory disease, musculoskeletal disorders, pain, osteoporosis, Alzheimer's disease, obesity, anorexia, urinary and kidney disease, respiratory disease; diagnostic reagents and contrast media for medical use, is likely to cause confusion, mistake or deception by having the public erroneously assume or believe that the goods emanate

from Opposer, or that they are endorsed, licensed or sponsored by, or in some other way associated or connected with Opposer, in view of Opposer's prior use and registration of AZARGA, all to Opposer's irreparable damage.

For the reasons set forth in ¶¶1-11, Opposer believes and believing asserts that it will be damaged by the registration of the mark in application Serial No. 77/592,507--ARZART. Accordingly, Opposer prays that this opposition be sustained and that Applicant be refused registration of the ARZART mark for the goods set forth in Application Serial No. 77/592,507.

The filing fee of \$300.00 is submitted herewith. If additional fees are required, please charge them to the deposit account of the undersigned, No. 50-0573.

Respectfully submitted,

ALCON, INC.

By: _____

Jennifer L. Dean
Anthony J. Palumbo
Drinker Biddle & Reath LLP
1500 K Street, N.W., Suite 1100
Washington D.C. 20005-1209
202 842-8800
Fax: 202 842-8465
Attorneys for Opposer

EXHIBIT A

Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2009-08-20 10:59:08 ET

Serial Number: 77188722 Assignment Information Trademark Document Retrieval

Registration Number: 3391196

Mark

AZARGA

(words only): AZARGA

Standard Character claim: Yes

Current Status: Registered.

Date of Status: 2008-03-04

Filing Date: 2007-05-23

Transformed into a National Application: No

Registration Date: 2008-03-04

Register: Principal

Law Office Assigned: LAW OFFICE 103

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 650 -Publication And Issue Section

Date In Location: 2008-03-04

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Alcon, Inc.

Address:

Alcon, Inc.
Bosch 69
CH-6331 Hunenberg
Switzerland

Legal Entity Type: Corporation**State or Country of Incorporation:** Switzerland

GOODS AND/OR SERVICES

International Class: 005**Class Status:** Active

Ophthalmic pharmaceutical preparations

Basis: 44(e)**First Use Date:** (DATE NOT AVAILABLE)**First Use in Commerce Date:** (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Foreign Application Number: 52298/2007**Foreign Registration Number:** 557699**Foreign Registration Date:** 2007-05-01**Country:** Switzerland**Foreign Filing Date:** 2007-03-08**Foreign Expiration Date:** 2017-03-01**Foreign Renewal Date:** 2017-03-01

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2008-03-04 - Registered - Principal Register

2007-12-18 - Published for opposition

2007-11-28 - Notice of publication

2007-11-14 - Law Office Publication Review Completed

2007-11-13 - Approved for Pub - Principal Register (Initial exam)

2007-10-04 - Teas/Email Correspondence Entered
2007-10-04 - Communication received from applicant
2007-09-27 - TEAS Response to Office Action Received
2007-09-24 - Notification Of Letter Of Suspension E-Mailed
2007-09-24 - LETTER OF SUSPENSION E-MAILED
2007-09-24 - Suspension Letter Written
2007-09-13 - Applicant/Correspondence Changes (Non-Responsive) Entered
2007-09-13 - TEAS Change Of Owner Address Received
2007-09-10 - Teas/Email Correspondence Entered
2007-09-10 - Communication received from applicant
2007-09-06 - TEAS Response to Office Action Received
2007-08-30 - Combined Examiner's Amendment/Priority Action Entered
2007-08-29 - Notification Of Examiner's Amendment/Priority Action E-Mailed
2007-08-29 - Examiner's Amendment/Priority Action E-Mailed
2007-08-29 - Examiners Amendment And/Or Priority Action - Completed
2007-08-27 - Assigned To Examiner
2007-07-19 - Applicant amendment prior to exam entered
2007-07-19 - Assigned To LIE
2007-07-03 - TEAS Preliminary Amendment Received
2007-05-30 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Correspondent

Denise Vivar
Alcon Laboratories, Inc.
TB4-6
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Fort Worth TX 76134

Phone Number: 817-551-6803

Fax Number: 817-551-4373

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

United States Patent and Trademark Office

Reg. No. 3,391,196

Registered Mar. 4, 2008

**TRADEMARK
PRINCIPAL REGISTER**

AZARGA

ALCON, INC. (SWITZERLAND CORPORATION)
BOSCH 69
CH-6331 HUNENBERG, SWITZERLAND

FOR: OPHTHALMIC PHARMACEUTICAL PREPARATIONS, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46, 51 AND 52).

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

PRIORITY CLAIMED UNDER SEC. 44(D) ON SWITZERLAND APPLICATION NO. 52298/2007, FILED 3-8-2007, REG. NO. 557699, DATED 5-1-2007, EXPIRES 3-1-2017.

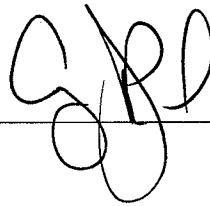
SER. NO. 77-188,722, FILED 5-23-2007.

JANICE KIM, EXAMINING ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Opposition was served on Applicant's counsel of record at the following address of record, by First-Class Mail this 20th day of August 2009.

Ray Thomas, Jr.
Wenderoth, Lind & Ponack, L.L.P.
Suite 400 East
1030 15th Street NW
Washington DC 20005-1503

A handwritten signature in black ink, appearing to be "R. Thomas", is written over a horizontal line.